

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

Benjamin Pena,  
Plaintiff,

-VS-

Midland Credit Management,  
a corporation; and Does 1 through 10  
inclusive  
Defendant.

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Case No:

'09 CV 1 42 7 BEN

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FILED  
2009 JUN 30 PM 3:29  
CLERK U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY  DEPUTY

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**COMPLAINT**

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**JURISDICTION**

Jurisdiction of this court arises under 28 U.S.C. 1331 and pursuant to 15 U.S.C. 1692k(d), and pursuant to 28 U.S.C. 1367 for pendent state law claims.

This action arises out of Defendant's violations of the Fair Debt Collection Practices Act., 15 U.S.C. 1692, et seq. ("FDCPA") and by the Rosenthal Act, California Civil Code 1788.2(c)

Plaintiff, Benjamin Pena, is a natural person residing in the State of California, County of San Diego and is a "consumer" as that term is defined by 15 U.S.C. 1692a(3)

Defendant Midland Credit Management, is a collection agency operating from an address of 8875 Aero Drive, Suite 200, San Diego, California 92123 and is a "debt collector" as that term is defined by 15 U.S.C. 1692A(6)

Venue is proper in this district because the acts and transactions occurred here, the Plaintiff resides here, and the Defendant transacts business here.



Defendants are engaged in the collection of debts from consumers using the mail and telephone. Defendants regularly attempt to collect consumer debts alleged to be due to another. Defendants are “debt collectors” as defined by the FDCPA, 15 U.S.C. 1692A(6), and by the Rosenthal Act, California Civil Code 1788.2(c).

The true names and capacities, whether individual, corporate (including officers and directors thereof), associate or otherwise of Defendants sued herein as DOES 1 through 10, inclusive, are unknown to Plaintiff, who therefore sues these Defendants by such fictitious names. Plaintiff is informed and believes, and alleges that each Defendant designated as a DOE is involved in or is in some manner responsible, as a principal, beneficiary, agent, co-conspirator, joint venturer, alter ego, third party beneficiary, or otherwise, for the agreements, transactions, events and/or acts hereinafter described, and thereby proximately caused injuries and damages to Plaintiff. Plaintiff requests that when the true names and capacities of these DOE Defendants are ascertained, they may be inserted in all subsequent proceedings, and that this action may proceed against them under their true names.

### **FACTUAL SUMMARY**

Sometime prior to May 2009, upon information and belief, it was alleged Plaintiff incurred a financial obligation that was primarily for personal, family or household purposes, and therefore a “debt” as that term is defined by 15 U.S.C. 1692A(5).

Sometime thereafter, the alleged debt was consigned, placed or otherwise transferred to the Defendant for collection from Plaintiff.

In May 2009, Plaintiff disputed this debt with the Credit Bureaus and the Defendant directly. Plaintiff requested validation of said debt, and notified the Defendant that said debt was not his.

Despite being aware of these facts the Defendant never provided verification of said debt and instead reported this debt as “Verified” to all three credit bureaus even though it knew it was not.

In June 2009, Defendant “Re-Aged” the disputed accounts in an effort to make the alleged delinquency

seem more recent and damage Plaintiff's FICO score.

As a result of Defendant's actions Plaintiff was denied Credit.

As a result of the Defendants collections activities and communications, the Plaintiff has suffered loss of self-esteem and peace of mind, and has suffered emotional distress, humiliation and embarrassment.

### **COUNT I, FDCPA VIOLATIONS**

The previous paragraphs are incorporated into this count as if set forth in full.

The acts and omissions of the Defendants and its representatives, employees and or agents constitute numerous and multiple violations of the FDCPA.

The acts Defendants violations are multiple, willful and intentional.

Pursuant to FDCPA Section 1692k the Plaintiff is entitled to actual damages, statutory damages, and reasonable costs and fees.

### **COUNT II**

Plaintiff repeats, re alleges, and incorporates by reference all of the foregoing paragraphs.

Defendants conduct as listed above furthermore constitutes numerous violations of the Rosenthal Act.

### **COUNT III INVASION OF PRIVACY, INTRUSION INTO PRIVATE AFFAIRS**

Plaintiff, repeats, re alleges, and incorporates by reference all of the foregoing paragraphs.

Plaintiff has a reasonable expectation of privacy in her solitude, seclusion, and private concerns and affairs.

Defendants willfully and intentionally intruded into Plaintiff's solitude, seclusion and private affairs by repeatedly and unlawfully attempting to collect a debt.

Defendants intrusions would be highly offensive to a reasonable person, and did in fact offend the Plaintiff.

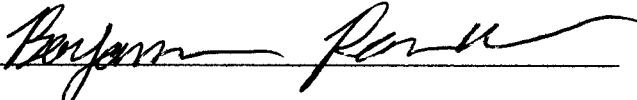
As a result of such invasions of privacy, Plaintiff was harmed and caused great mental and physical pain.

Defendants acted with oppression, fraud or malice, and Defendants are therefore liable to the Plaintiff for damages in an amount to be proven at trial, and for punitive damages.

WHEREFORE, Plaintiff respectfully requests that judgment be entered against the Defendants for the following:

- (a) actual damages.
- (b) Statutory damages pursuant to 15 USC 1692k and California Civil Code 1788.30(b) and 1788.30(c)
- (c) costs and reasonable fees
- (d) punitive damages
- (e) For such other relief as the court may deem just and proper.

Date: 06/29/09

Benjamin Pena/Pro Se:   
1196 Gamble Street  
Escondido, California 92026

**DEMAND FOR JURY TRIAL**

Please take note that Plaintiff demands trial by jury in this action.

Date: 6/29/09

Signature: 

JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Benjamin Pena

(b) County of Residence of First Listed Plaintiff  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

## DEFENDANTS

Midland Credit Management

County of Residence of First Listed Defendant **San Diego**  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

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## II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ PTF ☐ DEF  
Citizen of Another State ☐ 2 ☐ 2 Incorporated or Principal Place of Business In This State ☐ 4 ☒ DEF  
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 5 ☐ 5  
☐ 6 ☐ 6

## IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Acts <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
		<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**15 USC 1692 et seq**

Brief description of cause:

FDCPA, FCRA Violations underlying State Claims

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

06/29/2009

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

HPD  
pending  
for